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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6557 OF 2014

Sou Nutan Nitin Thakare
[Ms. Sugandha Madhav Khade] Petitioner.

V/s

The State of Maharashtra
and Others Respondents.

Mr. Narendra V. Bandiwadekar for the Petitioner.
Mr. S.B. Kalel, Asstt. Govt. Pleader for Respondent No.1-State.
Mr. Shankar P. Thorat for Respondent No.2.
Mr. Sagar Ashok Mane for Respondent Nos. 3 and 4.

**CORAM: B. R. GAVAI &
B. P. COLABAWALLA, JJ.**

DATE: 22nd FEBRUARY, 2018

P.C.:-

1] Rule. Rule is made returnable forthwith. Respondents waive service. Heard by consent of parties.

2] Petitioner has approached this Court being aggrieved by the order dated 26/04/2013 vide which, proposal sent by Respondent No.3 for grant of approval to the Petitioner as an Assistant Teacher, came to be rejected.

3] Petitioner came to be appointed as Shikshan Sevak by order

dated 15/2/2010 from 3/11/2009 since she satisfactorily completed three years as Shikshan Sevak. Respondent No.3 submitted a proposal to Respondent No.2 for grant of approval to the Petitioner's services as Assistant Teacher. The same was done on 27/11/2012. Vide impugned order dated 26/04/2013, the said proposal was rejected. The ground given in the impugned order for rejection of the said proposal is that, since in the staffing pattern of the year 2012-13 number of students had reduced and thereby three teachers were held to be surplus, the approval cannot be granted to the Petitioner.

4] Mr. Savagave, learned Counsel appearing on behalf of Respondent No.5 submits that, in view of the Circular dated 10/06/2016, the impugned order has been rightly passed.

5] The issue is no more *res integra*. It would be relevant to refer to the judgment of the coordinate Division Bench of this Court dated 15/06/2016 passed in Writ Petition No.9027 of 2014 in which in para 5, the Division Bench has observed as under:-

“5. Mr. Bandiwadekar, learned Counsel for the petitioner submitted that all the three documents of which reference is made in the impugned orders are already been annexed with the respondent no.3's proposal. Even the copies of the said proposal are annexed with the petition. This fact is not disputed

by the learned AGP. The AGP however submits that since the academic year 2013-14 there was reduction of two posts, the impugned order was correctly passed.”

6] In that view of the matter, we find that the Petition deserves to be allowed in terms of the said order dated 15/6/2016 passed by the Division Bench of this Court in Writ Petition No.9027/2014.

7] Hence, the following order:-

ORDER

(i) The impugned order is quashed and set aside. However, in the academic year 2012-13 also in view of the reduction of the post there is no vacancy and therefore the Petitioner, after approval of service as Assistant Teacher, is required to be declared surplus and thereafter absorbed in some other aided school. The petition accordingly succeeds.

(ii) Respondent No.5 is directed to grant approval to the Petitioner as Assistant

Teacher in prescribed payscale and thereafter declare her surplus and take action for absorbing in some other aided secondary school. Rule made absolute in above terms. The above exercise shall be completed by the respondent No.2 within period of six weeks from the date of receipt of the order.

(iii) Rule is made absolute in the aforesaid terms.

(B. P. COLABAWALLA, J.)

(B. R. GAVAI, J.)